

AMENDED IN ASSEMBLY MAY 3, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 265

Introduced by Assembly Member Ammiano

February 7, 2011

An act to ~~amend Section 1179 of~~ *add Section 1178.5 to* the Code of Civil Procedure, relating to tenancies.

LEGISLATIVE COUNSEL'S DIGEST

AB 265, as amended, Ammiano. Tenancies: unlawful detainer.

Existing law specifies that a tenant is guilty of unlawful detainer upon default in the payment of rent under the lease after receipt of 3 days' notice of that violation and failure to correct it. Existing law authorizes ~~the~~ *a* court to relieve a tenant against the forfeiture of a lease or rental agreement in case of hardship, and also grants a court the discretion to relieve any person against forfeiture on its own motion.

This bill would ~~require a court to relieve a tenant against the forfeiture of a lease or rental agreement if the tenant pays~~ *authorize a residential tenant who has been served the 3 days' notice to redeem a tenancy and continue in lawful possession by tendering to the owner or the owner's agent the amount of rent in arrears, the amount of any subsequent rent that has become due, and the reasonable costs of the proceedings court costs and attorney's fees incurred by the plaintiff in an unlawful detainer action as of the date of tender, in accordance with specified procedures.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1178.5 is added to the Code of Civil*
2 *Procedure, to read:*

3 1178.5. (a) *A residential tenant who has been served a notice*
4 *under paragraph (2) of Section 1161 may redeem the tenancy and*
5 *continue in lawful possession by tendering to the owner or owner's*
6 *agent all of the following:*

7 (1) *The amount of the rent specified in the three days' notice to*
8 *be in arrears.*

9 (2) *Any subsequent rent that has become due under the lease*
10 *or rental agreement.*

11 (3) *Any reasonable court costs and attorney's fees incurred by*
12 *the plaintiff as of the date of tender, subject to the following*
13 *limitations:*

14 (A) *No payments are required if tender is made prior to the*
15 *filing of an unlawful detainer action.*

16 (B) *Reasonable attorney's fees shall not exceed three hundred*
17 *fifty dollars (\$350) if tender is made prior to the commencement*
18 *of trial if the matter is contested, or at any time if the matter is*
19 *uncontested.*

20 (b) *Upon tender of the total amount specified in subdivision (a)*
21 *prior to the entry of judgment in an unlawful detainer action, the*
22 *plaintiff shall file a request for dismissal of the action. If the*
23 *amount has been tendered to, but not accepted by, the owner or*
24 *owner's agent, the court shall, upon ex parte application, grant*
25 *conditional judgment for the tenant subject to the tenant's payment*
26 *of the amount due under subdivision (a).*

27 (c) *Upon tender of the total amount specified in subdivision (a)*
28 *after entry of judgment and before plaintiff's recovery of*
29 *possession, the court shall grant relief from forfeiture pursuant to*
30 *the procedures set forth in Section 1179 and restore the tenant to*
31 *possession.*

32 (d) *The right to redeem under this section is in addition to, and*
33 *does not limit, any right a tenant may have to seek discretionary*
34 *relief from forfeiture pursuant to Section 1179 or any other law.*

35 (e) *For purposes of this section, tender shall be by cashier's*
36 *check, money order, or other certified form of payment, except*
37 *that payment tendered on behalf of a tenant by a nonprofit*
38 *organization or governmental agency, where the entity states in*

1 *writing that it makes no claim to right of possession of the premises*
2 *through the payment of rent, shall be considered part of the tender*
3 *under subdivision (a) regardless of the form of that payment.*

4 *(f) A tenant may not exercise the right to redeem under this*
5 *section in response to an unlawful detainer action more than once*
6 *in any 12-month period.*

7 **SECTION 1.** ~~Section 1179 of the Code of Civil Procedure is~~
8 ~~amended to read:~~

9 ~~1179. (a) The court may relieve a tenant against a forfeiture~~
10 ~~of a lease or rental agreement, whether written or oral, and whether~~
11 ~~or not the tenancy has terminated, and restore the tenant to his or~~
12 ~~her former estate or tenancy, in case of hardship, as provided in~~
13 ~~Section 1174. The court has the discretion to relieve any person~~
14 ~~against forfeiture on its own motion.~~

15 ~~(b) An application for relief against forfeiture may be made at~~
16 ~~any time prior to restoration of the premises to the landlord. The~~
17 ~~application may be made by a tenant or subtenant, or a mortgagee~~
18 ~~of the term, or any person interested in the continuance of the term.~~
19 ~~Notice shall be made upon petition, setting forth the facts upon~~
20 ~~which the relief is sought, and shall be verified by the applicant.~~
21 ~~Notice of the application, with a copy of the petition, shall be~~
22 ~~served at least five days prior to the hearing on the plaintiff in the~~
23 ~~judgment, who may appear and contest the application.~~
24 ~~Alternatively, a person appearing without an attorney may make~~
25 ~~the application orally, if the plaintiff either is present and has an~~
26 ~~opportunity to contest the application, or has been given ex parte~~
27 ~~notice of the hearing and the purpose of the oral application. In no~~
28 ~~case shall the application or motion be granted except on condition~~
29 ~~that full payment of rent due, or full performance of conditions or~~
30 ~~covenants stipulated, so far as the same is practicable, be made.~~

31 ~~(c) (1) In addition to any discretionary relief from forfeiture~~
32 ~~available under this chapter, in cases of eviction for nonpayment~~
33 ~~of rent of a residential tenant who is being evicted from his or her~~
34 ~~principal place of residence, the court shall relieve the tenant~~
35 ~~against a forfeiture of a lease or rental agreement, whether written~~
36 ~~or oral, and whether or not the tenancy has terminated, and restore~~
37 ~~the tenant to his or her former estate or tenancy, if the tenant pays~~
38 ~~the following into the court for the landlord:~~

39 ~~(A) The amount of rent in arrears, as specified in the three days'~~
40 ~~written notice requiring payment of rent.~~

- 1 ~~(B) Any subsequent rent that has become due.~~
- 2 ~~(C) The reasonable costs of the proceedings.~~
- 3 ~~(2) For purposes of this subdivision, “reasonable costs of the~~
- 4 ~~proceedings” shall include reasonable attorney’s fees. However,~~
- 5 ~~attorney’s fees shall not exceed three hundred fifty dollars (\$350)~~
- 6 ~~if the tenant has paid the amounts specified in this subdivision~~
- 7 ~~prior to the commencement of trial.~~
- 8 ~~(3) An application for relief under this subdivision may be made~~
- 9 ~~at any time prior to the restoration of the premises to the landlord.~~